IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9006 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRATIK VALMIK VAIDYA AND ANOTHER
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR HARSHADRAY A DAVE for Petitioners, MR HARDIK A DAVE for Petitioners.
MS NISHA PARIKH, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 20/07/2007

ORAL JUDGMENT

Rule. Learned AGP, Ms. Nisha Parikh, waives service.

The petitioners have approached this Court under Article 226 of the Constitution with the grievance that after their purchasing a flat in a co-operative housing society in the year 1994, they have straightaway received a 'chalan' from the respondents directing them to pay deficit stamp duty of Rs.56,173/-, which includes penalty and interest. It is stated and submitted by learned counsel, Mr.Dave that the petitioners have not received any order of assessment of stamp duty, nor have the petitioners received any notice from the respondents for hearing under the provisions of the Bombay Stamp Act, 1958 and the Rules made thereunder.

Learned AGP, appearing for the respondents, submitted, on the basis of instructions and record of the case, that statutory notices and orders made in the case of the petitioners were not sent by registered post A.D. to the petitioners as per the requirement of the Rules. It was, therefore, submitted that there were serious procedural lapses on the part of the respondents in raising demand of stamp duty and penalty from the petitioners and, in such circumstances, the petitioners were required to be given an opportunity of being heard. After that, a fresh order could be passed under the provisions of Section 32-A of the Bombay Stamp Act.

In view of above facts and fair concession made by learned AGP, the petition is allowed with the direction that original order dated 30-6-2004 made after notice dated 5-2-2004, in respect of sale deed dated 13-12-1994, shall stand quashed and subsequent proceedings for recovery shall also stand quashed. The respondents shall, in view of delay and concession recorded herein above, expeditiously re-assess the amount of deficit stamp duty and make fresh order in accordance with law and after following procedure prescribed under the Rules applicable in the

facts of the present case. Rule is made absolute accordingly with no order as to costs.

(D.H.Waghela, J.)

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